

Section 9.5. Modification and Waiver.

Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 9.6. Expenses.

Except as otherwise expressly provided herein, if the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses, ~~subject to the rights of such party contemplated under Article VIII with respect to a willful breach, violation or~~

Section 9.7. Survival of Representations and Warranties.

The respective representations and warranties of CareFirst, Purchaser and CFAC contained herein or in any certificates or other documents delivered prior to or at the Closing by such parties pursuant to the terms of this Agreement shall terminate upon the consummation of the Merger and be of no further force and effect.

Section 9.8. Notices.

Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (including by overnight courier or express mail service), postage or fees prepaid, or sent by facsimile with original sent by overnight courier,

If to Purchaser:

Pacific
[address]

Attn:

agree to any
materially burdensome combination or

"BCBS-NCA" means Group Hospitalization and Medical Services, Inc. d/b/a Blue Cross and Blue Shield of the National Capital Area, a non-profit corporation incorporated under federal charter.

"Benefit Plans" means all employee benefit plans as defined in Section 3(3) of ERISA and all other employee benefit arrangements, obligations, customs, or practices (including but not limited to a payroll practice), whether or not legally enforceable, to provide benefits, other than salary, as compensation for services rendered, to current or former directors, employees or agents of CareFirst or the Purchaser, as the case may be or an ERISA Affiliate of such party, including, without limitation, employment agreements (whether written or oral), severance agreements, executive compensation arrangements, incentive programs or arrangements, sick leave, vacation pay, severance pay policies, plant closing benefits, salary continuation for disability, consulting or other compensation arrangements, workers' compensation, deferred compensation, bonus, stock option or purchase, hospitalization, medical insurance, life insurance, tuition reimbursement or scholarship programs, any plans providing benefits or payments in the event of a change of control, change in ownership, or sale of a substantial portion (including all or substantially all) of the assets of any business of CareFirst or the Purchaser, other than Multiemployer Plans, maintained by CareFirst or the Purchaser or an ERISA Affiliate or to which CareFirst or the Purchaser or an ERISA Affiliate has contributed or is or was obligated to make payments, in each case with respect to any current or former employees, directors or agents of CareFirst, the Purchaser or an ERISA Affiliate of such party, in the six-year period before the date of this Agreement.

"Best Efforts" shall mean, as to a party hereto, an undertaking by such party to perform or satisfy an obligation or duty or otherwise act in the manner that a person desirous of achieving a result would act in similar circumstances to ensure that such result is achieved as expeditiously as possible; provided however, that such party shall not be required to take any action that would result in a materially adverse change in the benefits to such person of this Agreement and the transactions contemplated by this Agreement.

"Board of Directors" means the Purchaser Board of Directors, the CFAC Board of Directors, or the CareFirst Board of Directors, as is indicated by the context in which the term appears.

"CareFirst" means CareFirst, Inc., a Maryland corporation.

"CareFirst Common Stock" shall have the meaning set forth in the Recitals hereto.

"CareFirst Company" means CareFirst and each CareFirst Subsidiary (collectively, the "CareFirst Companies").

"CareFirst Disclosure Schedule" means the confidential disclosure provided by CareFirst to Purchaser pursuant to this Agreement.

"CareFirst Environmental Reports" shall have the meaning set forth in Section 4.15 hereof.

"CareFirst Insurer" means the Primary CareFirst Insurers and any other Insurer that is directly or indirectly owned, controlled or operated by CareFirst or any of its Affiliates.

"CareFirst Material Adverse Effect" shall mean a material adverse effect on the business, assets, liabilities, financial condition or results of operations of the CareFirst Companies, taken as a whole. The failure of any of the CareFirst Companies to qualify as an "existing Blue Cross and Blue Shield organization," as defined in Section 833(c)(2) of the Code, shall not constitute a CareFirst Material Adverse Effect.

"CareFirst Material Contracts" means, with respect to the CareFirst Companies: (i) the 25 largest provider and 25 largest customer contracts measured in terms of payments to or receipts from any CareFirst Company (and all contracts that contain a fee, rate or performance guarantee applicable to any period longer than 12 months involving an amount in excess of \$_____); (ii) any contract, other than a provider contract, customer contract or employee benefit plan, arrangement or agreement, that, by its terms, does not terminate within one year after the date of such contract and is not cancelable during such period without penalty or without payment, and which involves an aggregate payment or commitment on the part of any party thereto of more than \$1 million during any twelve (12) month period; (iii) any contract, other than a contract, plan, arrangement or agreement referenced in subsection (ii) above, that is material to the financial condition, results of operations, assets, business or prospects of the CareFirst Companies, taken as a whole; and (iv) any material (iv) any loan agreement or other evidence of indebtedness for borrowed money, and (v) any contract or other agreement limiting in any material respect the ability of any CareFirst Company to sell any products or services, engage in any line of business or compete with any person or entity or operate at any location, (vi) any contract or other agreement restricting the payment of dividends or the repurchase of stock or other equity, (vii) employment agreements, (viii) change in control or similar arrangements with any officers, employees or agents of any CareFirst Company that will result in any obligation (absolute or contingent) of such CareFirst Company to make any payment to any officers, employees or agents of any CareFirst Company as a result of the consummation of the transactions contemplated hereby, termination of employment or both, (ix) labor contract, (x) reinsurance agreements, (xi) joint venture, partnership agreements or other similar agreements, (xii) any contract for the acquisition, directly or indirectly (by merger or otherwise), of any entity or business, and (xiii) any contract, agreement or policy for reinsurance.

Repeat

why

"CareFirst Owned Properties" means any real property that is owned in fee simple by any CareFirst Company.

"CareFirst Permitted Liens" means any (i) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings, (ii) mechanics' or similar liens, (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation, (iv) easements and similar encumbrances incurred in the ordinary course of business which do not materially diminish the value of the property subject

current or former employees of CareFirst or the Purchaser, as the case may be, or an ERISA Affiliate of such party before the Closing Date.

"Multiple Employer Plan" means a Benefit Plan that is a multiple employer plan subject to Sections 4063 and 4064 of ERISA or Section 413(c) of the Code.

"Pension Plan" means a Benefit Plan that is an employee pension benefit plan as defined in Section 3(2) of ERISA.

"Per Share Amount" shall have the meaning set forth in Section 3.1 hereof.

"Primary CareFirst Companies" shall mean CareFirst, BCBS-MD, BCBS-NCA and BCBSD.

"Primary CareFirst Insurers" means BCBS-MD, BCBS-NCA and BCBSD.

"Primary Purchaser Companies" means [to come].

"Primary Purchaser Insurers" means [to come].

Why used?

"Private Letter Ruling" shall mean a letter ruling from the IRS to CareFirst ruling that:

(a) (i) The Conversion of each of the Primary CareFirst Companies from non-stock nonprofit corporation to a for-profit stock corporations will constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Code; (ii) the Primary CareFirst Companies will be parties to a reorganization within the meaning of Section 368(b) of the Code; (iii) no gain or loss will be recognized by the Primary CareFirst Companies as a result of the reorganization; and (iv) each of the Primary CareFirst Companies' basis, holding periods, earnings and profits, and accounting periods and methods will not be affected by the Conversion.

(b) The Merger will not cause the Conversion to violate the continuity of interest requirement of Treasury Regulation Section 1.368-1(e), or otherwise cause the Conversion to fail to qualify as a reorganization within the meaning of Section 368(a)(1)(E) of the Code.

(c) Gain or loss recognized by the Tax-Exempt Entities from the exchange of the CareFirst Common Stock in the Merger will not be subject to unrelated business income tax.

"Purchase Price" means \$1.3 billion, in U.S. dollars.

"Purchaser" means Pacific, a _____ for-profit corporation.

"Purchaser Common Stock" means the Common Stock of the Purchaser.

"Purchaser Company" means Purchaser and any Purchaser Subsidiary.

Delaware

APPENDIX A

PRINCIPAL TERMS OF PLAN OF CONVERSION

The board of directors of CareFirst, Inc. and each of its non-profit subsidiaries (CareFirst of Maryland, Inc., Group Hospitalization and Medical Services, Inc. ("GHMSI") and Blue Cross Blue Shield of Delaware, Inc. ("BCBSD")) will adopt a Plan of Conversion providing for the conversion of the companies from non-profit to for-profit status. For all companies except GHMSI, the conversion will be accomplished by means of the adoption of amended and restated articles or certificates of incorporation providing that the corporation will operate as a for-profit business corporation. The conversions will be subject to regulatory approval in each of the jurisdictions listed. GHMSI, a federally chartered corporation, will be re-chartered in the District of Columbia, which will require approval of the U.S. Congress. In determining whether to approve the conversion, the regulators must find that the fair value of the assets has been received and that the conversion is in the public interest.

Following the amendment of its charter (or, in the case of GHMSI, its re-chartering), each subsidiary insurer will issue shares of its Common Stock (which will constitute all of its issued and outstanding shares) to CareFirst, thus becoming a wholly-owned subsidiary of CareFirst. CareFirst will then issue to tax-exempt entities in Maryland, the District of Columbia and Delaware a number of shares of Common Stock of CareFirst representing the percentage of the aggregate value of CareFirst represented by the subsidiary insurer of the particular jurisdiction, as agreed among the regulators in the jurisdictions involved. Following those issuances, all of the issued and outstanding capital stock of CareFirst will be owned by the tax-exempt entities designated by the regulators in those jurisdictions.

In the Merger, each share of CareFirst Common Stock will be converted into ~~an equity interest in Purchaser and an amount of cash equal to the per share purchase price payable pursuant to the terms of the merger.~~

After the merger, the Primary CareFirst Insurers will each continue to provide healthcare services as licensed insurers to the communities in each of their respective jurisdictions that they currently serve.

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The Aggregate Per Share Consideration
(as defined in the Merger Agreement)